



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080016

Petitioner, Jane Delgado, applied to the Building Commissioner for permission to legalize an existing parking lot with nine parking spaces located behind the residence at 25 Davis Avenue. The application was denied and an appeal was taken to this Board.

On 1 May 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 26 June 2008, at 7:00 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 5 and 12 June 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **JANE DELGADO, TRUSTEE**

Location of Premises: **25 DAVIS AVENUE BRKL**

Date of Hearing: **06/26/2008**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from

1. **4.01.2; Where Noted in Table of Use Regulations, Use Allowed by Special Permit.**
2. **4.07; Table of Use Regulations, Use #22 Parking area for more than six spaces, Special Permit.**
3. **5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.**
4. **6.04.5.c.4; Design of All Off-Street Parking Facilities**
of the Zoning By-Law to construct a parking lot containing 9 parking spaces at **25 DAVIS AVENUE BRKL.**

Said Premise located in a **T-5** district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.***

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Jesse Geller and Kathryn Ham. The petitioner, Jane Delgado, was represented by Ronny Sydney of 370 Washington Street, Brookline, MA.

Attorney Sydney described the site and neighborhood. She said that 25 Davis Avenue is located near the intersection of Davis Avenue and Washington Street near Brookline Village. Situated on the lot is a two-and-a-half-story, two-family dwelling. A driveway runs along the

west side of the dwelling to a parking area in the rear yard. Most of the rear yard is paved to enable parking, and the rest of the property is well landscaped and maintained. Surrounding properties include primarily single-, two- and three-family dwellings. She said that the applicant, Jane Delgado, proposes to legalize the existing nine-car parking area behind the dwelling. Currently, most of the rear yard is paved to allow for parking. This paving extends nearly to the side lot lines. The existing driveway is 13 feet wide, and the proposed parking spaces range from 7.5 feet wide by 16 feet deep to 8.5 feet wide by 18 feet deep.

The Chair asked whether anyone wished to speak in favor or in opposition to the proposal. Mitchell Notis of 15 Davis Avenue spoke in favor of the proposal. He said that he is someone who rents a parking space at 25 Davis Avenue and appreciates being able to park in the neighborhood since his condominium at 15 Davis Ave. does not have parking. He also mentioned that 44 Davis Avenue recently lost all of their parking because a dwelling is being constructed on the parking site leaving fewer parking spaces in the neighborhood than ever before. He stated that due to the fact that there is no overnight parking in Brookline, it becomes very difficult to find parking for some of the people living at that end of Davis Avenue.

There were also several neighbors who spoke in opposition to the proposal for nine parking spaces. Steve Lipsett spoke against the proposal stating that he was opposed to bringing more traffic into the area. Cass Miller, who lives directly across the street, spoke about difficulties with snow removal and excess being put on her property. Scott McNeill, the property manager with East Coast Realty, said that he would take responsibility to see that the snow removal was handled properly and that the snow accumulation would be removed if necessary. Another neighbor expressed concerns about traffic and little children in the neighborhood. Janet Green, 30 Davis Avenue also expressed similar concerns about the project. James Lockwood, a

contractor from Jamaica Plain, said that he was concerned about putting blacktop over a backyard. The Petitioner explained that the blacktop had been there for a long time. The property manager promised to be available to the neighbors and would give the neighbors his phone number to alleviate any problems that might occur. Other neighbors spoke about an increase of traffic in the neighborhood as well as the fact that there are small children and an increase in traffic could propose a danger.

Lara Curtis, Planner, delivered the findings of the Planning Department.

Section 4.01.2 – Permitted Uses

Section 4.07 – Table of Use Regulations, Use #22: Residential parking area, whether as the sole use of a lot or as a secondary use, solely for the storage of cars of residents of other lots located within 1,400 feet. *For six or more spaces, a special permit is required.*

Section 6.04.5.c.4 – Setbacks for Parking Areas: A parking lot containing more than six vehicles shall be set back from all lot lines the distance specified for minimum front yard depth under Table 5.01. The required front yard setback for this property is 15 feet.

	Required	Existing	Proposed	Finding
Parking Area Side & Rear Setback	15 feet from side and rear lot lines	Side: 1' to 5' Rear: 12' to 21'	Same as existing	Special Permit*

*Under Section 5.43, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for setback requirements if counterbalancing amenities are provided.

Ms. Curtis said that the Planning Board supports this proposal to legalize the parking area to allow for parking of 9 cars, as long as the existing parking lot is brought closer into compliance with the dimensional requirements of the Zoning By-law. Currently, the extra parking is being utilized by neighbors. As a counterbalancing amenity for the deficient side and rear yard setbacks, the fencing around the parking area should be replaced so that it is attractive and adequately screens the parking area, and the lot should be appropriately striped to indicate parking spaces. Additionally, the area to the rear of the parking area should be appropriately landscaped to protect rear properties from headlight glare. These changes would help ensure the parking lot's legalization will not have a detrimental impact on neighboring properties.

reemphasized that the fence in the rear of the property will be repaired and a landscaping proposal will be submitted to the Assistant Director for Regulatory Planning.

Jesse Geller opined that while it is unfortunate that most of the backyard is paved, it was done quite some time ago and no date for this work can be ascertained. Therefore, the paving is not a question before the Board. Also, he said several neighbors spoke of the increased traffic on Davis Avenue, but since this lot has been in existence for some time, no additional traffic will result from the granting of the relief. The Chair said that the paving of the rear yard is not the question before the Board; the relief required for additional spaces is the only question under consideration. She said that should the relief not be granted, the neighbors currently using the spaces will have to look elsewhere potentially exacerbating an already tight parking situation in Brookline.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with Section 4.07, Use #22 Table of Use Regulations, and Section 5.43, of the Zoning By-law and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, a final parking and landscape plan, indicating parking area setbacks, location of snow storage, planting materials, and fencing, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. The parking area shall be appropriately striped to indicate 9 parking spaces. No more than 9 vehicles shall be parked on the property.
3. Five of the parking spaces shall first be offered to the residents of the two-family dwelling at 25 Davis Avenue.
4. If required, the applicant shall obtain an open-air parking license from the Board of Selectmen if spaces are to be rented.
5. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or professional land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals



Enid Starr

Filing Date: July 30, 2008

True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals

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TOWN CLERK

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